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Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin dan Teksi Lapangan Terbang SeMalaysia (GTSM) v GrabCar Sdn Bhd

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HIGH COURT (KUALA LUMPUR) — WRIT NO WA-22NCVC-801–12 OF 2020
AHMAD BACHE J
27 OCTOBER 2021

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Civil Procedure — Summary disposal order — Summary judgment — Defendant posed questions of law to High Court for final determination — Whether questions posed would lead to speedy disposal of suit — Whether constitutional provisions enforceable against private parties — Whether claims of public law could be commenced without leave for judicial review — Whether absence of contract was fatal to plaintiff's claim — Whether plaintiff had locus standi to commence suit — Whether claim time barred — Whether plaintiff's claims should be disposed — Rules of Court 2012 O 14A & O33 r 5

D

E

Civil Procedure — Locus standi — Locus standi to bring action — Whether plaintiff had locus to commence action for personal claims — Whether plaintiff was attempting to enforce public right — Whether plaintiff commenced representative action — Whether plaintiff could commence private action for infringement of traffic and competition laws — Societies Act 1966 s 7

F

Limitation — Accrual of cause of action — Plaintiff alleged statutory breaches — When cause of action accrued — Whether claims time barred — Limitation Act 1953 s 6(1)

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The plaintiff, a registered umbrella society for taxis, limousines, and airport taxis had commenced a suit against GrabCar ('defendant') for, inter alia, breach of contract, breach of statutory duties and breach of several laws. The plaintiff alleged that the defendant had run an illegal business and was in competition with their members' activities, causing damages to them. Hence, the plaintiff claimed for damages and various declarations for the alleged statutory breaches from 16 April 2014, the time when the defendant was incorporated. The defendant resisted the plaintiff's claim on the ground that: (a) the plaintiff had no locus standi to sue and all the claims were time barred; (b) there was no contract between the defendant and the plaintiff; and (c) the plaintiff failed to get leave for judicial review as the claims involved public law/interest claims. Pursuant thereto, vide encl 7, the defendant posed seven questions of law to the High Court under O 14A and/or O 33 r 5 of the Rules of Court 2012 for final determination to dispose of the matter namely: (i) whether the plaintiff, as a

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society registered under s 7 of the Societies Act 1966, had the locus standi to claim for the purported losses and damages allegedly caused by the defendant to taxi and rental car drivers; (ii) whether the alleged causes of action of the plaintiff were time barred under s 6(1) of the Limitation Act 1953 ('the LA') as the claim was filed on 4 December 2020, more than six years from 16 April 2014, the date the defendant was incorporated and allegedly ran its business illegally; (iii) whether the Road Transport Act 1987 ('the RTA') granted a right of private action to the plaintiff to sue the defendant for alleged breaches of the RTA; (iv) whether, under s 64 of the Competition Act 2010 ('the Competition Act'), in the absence of a finding of infringement of any prohibition under Part II of the Competition Act by the Competition Commission, could the plaintiff commence a private action against the defendant for the alleged infringement of the Competition Act; (v) whether the provisions of the Federal Constitution ('the FC') have 'horizontal effect' and were enforceable against private parties like the defendant; (vi) whether the filing of a civil action against the defendant for the plaintiff's claims of public law could be commenced without leave for judicial review and impleading the relevant statutory authority; and (vii) whether in the absence of a contract between the plaintiff and the defendant, could the plaintiff claim for alleged breaches of ss 24 and 66 of the Contracts Act 1950 ('the Contracts Act') and/or for compensation based on liquidated damages of RM100m and/or for damages to be assessed under s 75 of the Contracts Act against the defendant.

Held, allowing the defendant's application:

(1) The disputes were essentially with regard to the legality of the defendant's actions, and not on the facts, as alleged by the plaintiff. The plaintiff had merely averred that there were disputed facts without providing detailed particulars as to how those facts were in dispute. Hence, the court decided that the questions posed in encl 7 were questions of law, the determination of which would lead to the speedy disposal of the suit (see paras 14–16).

(2) The plaintiff's claims were premised on the alleged damages caused to each individual taxi driver and rental car drivers, damages which were personal to them and not to the plaintiff. The plaintiff had no locus standi to commence action for personal claims. Further, the damages of RM100m of LAD's claim was a contractual claim under s 75 of the Contracts Act. Unfortunately, there was no evidence of any contract between the defendant and the plaintiff in the first place, and there was also no LAD clause between the defendant and the plaintiff. The plaintiff attempted to enforce a 'public right' as the plaintiff was claiming against the defendant for the alleged failure to comply with the Road Transport Act, Federal Constitution, and the Competition Act. The plaintiff's complaints were actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public

Transport Commission. However, the plaintiff did not obtain the consent of the Attorney General to commence the instant action as required by the law. Therefore, question 1 ought to be answered in the negative in that the society had no locus standi to bring the claim and the plaintiff's claim should be dismissed (see paras 19–20 & 22–24).

(3) The plaintiff's contention that the present action was properly constituted as a representative action under O 15 r 12 of the Rules of Court 2012 was misconceived. Here, the plaintiff did not in its intitulement seek to bring a representative action on behalf of the taxi and rental car drivers. Therefore, the assertion that the plaintiff was commencing a representative action was inconsistent with the plaintiff's own pleadings. Therefore, again question 1 ought to be answered in the negative and the plaintiff's writ and statement of claim should be dismissed (see paras 25 & 27–30).

(4) The plaintiff pleaded that it sustained damages from 16 April 2014, ie, the date the defendant was incorporated and allegedly ran its business illegally, and that was the earliest date on which the cause of action could have accrued. Therefore, the plaintiff's action would have been time barred on 15 April 2020 and the claims of the plaintiff under the RTA, the Competition Act, the FC and Contracts Act/breach of contract would be barred by limitation when this suit was filed on 4 December 2020. Hence, question 2 ought to be answered in the affirmative (paras 33 & 35–36).

(5) The defendant did not operate motor vehicles on the road. Instead, the defendant provided an online platform only for third party independent e-hailing drivers to connect with passengers. Under the law, the defendant's business was defined as 'intermediation business'. Hence, the defendant and its business were not subjected to the RTA but under the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 instead. As such, it followed that the RTA did not create any obligation on the part of the defendant with the plaintiff, and that the defendant could not be sued for any purported breach of the RTA by the plaintiff (see paras 38 & 40).

(6) There must be a finding by the Competition Commission that the defendant was liable for the matters complained by the plaintiff before any private right of action may be pursued under the Competition Act. In the present case, there was no evidence of any findings made by the Competition Commission against the defendant in relation to the claim of the plaintiff. Without such a finding, the private action commenced by the plaintiff in this suit was untenable. Therefore, question 4 was answered in the negative in that the plaintiff could not bring a private

action in absence of a finding of infringement by the Competition Commission and the claim of the plaintiff ought to be dismissed (see paras 49–51).

(7) This was not a claim by individuals against the public authority or the government but between private parties. As such, the plaintiff could not invoke the provisions of the Federal Constitution in bringing a claim against the defendant. Hence, question 5 was answered in the negative in that the Constitution did not have a horizontal effect to confer rights for individual to bring claims against another individual and that the plaintiff's constitutional claims against the defendant for breach of arts 5, 6, 8 and 13 of the Federal Constitution was dismissed (paras 57–58).

(8) The society's complaints were actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public Transport Commission. However, these parties were not impleaded. As the claim constituted claims of public law, because those were decisions of the relevant public authorities, the correct mode should be by way of judicial review. Hence, question 6 was answered in the negative in that the plaintiff could not commence such public law claims without applying for leave for judicial review (see paras 59–60 & 67).

(9) There must first be an agreement or contract between the defendant and the plaintiff in the first place for any contractual claims under ss 24 and 66 of the Contracts Act to apply. Here, there was none and thus the issue was a non-starter. Regarding the plaintiff's claims and prayers for liquidated damages amounting to RM100m, such claim was equally unfounded and could be dismissed based on the basic contract law principle and from the wordings of s 75 of the Contracts Act 1950, there must be a contract or agreement and a sum named in the contract as the amount to be paid in case of such breach. The defendant had never entered into an agreement nor contract with the plaintiff. Hence, the above provisions were wholly inapplicable to the present suit. As such, question 7 was answered in the negative (see paras 68–69 & 72–74).

[Bahasa Malaysia summary

Plaintif, sebuah gabungan pertubuhan teksi, limosin dan teksi lapangan terbang berdaftar telah memulakan tindakan terhadap GrabCar ('defendan') untuk, antara lain, pelanggaran kontrak, pelanggaran kewajipan statutori dan pelanggaran beberapa undang-undang. Plaintif mendakwa defendan menjalankan perniagaan yang menyalahi undang-undang dan bersaing dengan aktiviti ahli mereka, menyebabkan kerugian kepada mereka. Oleh itu, plaintif menuntut ganti rugi dan pelbagai deklarasi bagi dakwaan pelanggaran statutori mulai 16 April 2014, masa defendan diperbadankan. Defendan menentang tuntutan plaintif atas alasan bahawa: (a) plaintif tidak mempunyai locus standi untuk menyaman dan kesemua tuntutan dihalang oleh had masa; (b) tiada

kontrak antara defendan dan plaintif; dan (c) plaintif gagal mendapat kebenaran untuk semakan kehakiman kerana tuntutan tersebut melibatkan tuntutan undang-undang/kepentingan awam. Menurutnya, melalui lampiran 7, defendan mengemukakan tujuh persoalan undang-undang kepada Mahkamah Tinggi di bawah A 14A dan/atau A 33 k 5 Kaedah-Kaedah Mahkamah 2012 untuk dapatan muktamad bagi melupuskan perkara tersebut iaitu: (i) sama ada plaintif, sebagai sebuah pertubuhan yang didaftarkan di bawah s 7 Akta Pertubuhan 1966, mempunyai locus standi untuk menuntut kerugian dan kerosakan yang didakwa disebabkan oleh defendan kepada pemandu teksi dan kereta sewa; (ii) sama ada kausa tindakan plaintif yang didakwa telah dihalang oleh had masa di bawah s 6(1) Akta Had Masa 1953 ('AHM') kerana tuntutan tersebut difailkan pada 4 Disember 2020, lebih daripada enam tahun mulai 16 April 2014, tarikh defendan diperbadankan dan didakwa menjalankan perniagaannya secara haram; (iii) sama ada Akta Pengangkutan Jalan 1987 ('APJ') memberikan hak tindakan persendirian kepada plaintif untuk menyaman defendan atas dakwaan pelanggaran APJ; (iv) sama ada, di bawah s 64 Akta Persaingan 2010 ('Akta Persaingan'), dengan ketiadaan pelanggaran mana-mana larangan di bawah Bahagian II Akta Persaingan oleh Suruhanjaya Persaingan, bolehkah plaintif memulakan tindakan persendirian terhadap defendan atas dakwaan pelanggaran Akta Persaingan; (v) sama ada peruntukan Perlembagaan Persekutuan ('PP') mempunyai 'kesan mendatar' dan boleh dikuatkuasakan terhadap pihak persendirian seperti defendan; (vi) sama ada pemfailan tindakan sivil terhadap defendan bagi tuntutan undang-undang awam plaintif boleh dimulakan tanpa kebenaran untuk semakan kehakiman dan mengatasi otoriti statutori yang berkaitan; dan (vii) sama ada dengan ketiadaan kontrak antara plaintif dan defendan, bolehkah plaintif menuntut dakwaan pelanggaran ss 24 dan 66 Akta Kontrak 1950 ('Akta Kontrak') dan/atau untuk pampasan berdasarkan ganti rugi tertentu sebanyak RM100 juta dan/atau untuk ganti rugi yang akan ditaksirkan di bawah s 75 Akta Kontrak terhadap defendan.

Diputuskan, membenarkan permohonan defendan:

(1) Pertikaian pada asasnya adalah berkenaan dengan kesahihan tindakan defendan, dan bukan berdasarkan fakta, seperti yang didakwa oleh plaintif. Plaintif hanya mengakui bahawa terdapat fakta yang dipertikaikan tanpa memberikan butiran terperinci tentang bagaimana fakta tersebut dipertikaikan. Oleh itu, mahkamah memutuskan bahawa persoalan yang dikemukakan dalam lampiran 7 adalah persoalan undang-undang, yang mana dapatannya akan membawa kepada pelupusan segera tindakan tersebut (lihat perenggan 14–16).

(2) Tuntutan plaintif adalah berdasarkan dakwaan ganti rugi yang ditanggung oleh setiap pemandu teksi dan pemandu kereta sewa, ganti rugi tersebut adalah peribadi kepada mereka dan bukan kepada plaintif. Plaintif tidak mempunyai locus standi untuk memulakan tindakan bagi

tuntutan persendirian. Selanjutnya, ganti rugi LAD sebanyak RM100 juta adalah tuntutan kontrak di bawah s 75 Akta Kontrak. Malangnya, tidak ada keterangan sebarang kontrak antara defendan dan plaintif pada mulanya, dan juga tiada klausa LAD antara defendan dan plaintif. Plaintif cuba untuk menguatkuasakan 'hak awam' kerana plaintif menuntut terhadap defendan atas dakwaan kegagalan untuk mematuhi Akta Pengangkutan Jalan, Perlembagaan Persekutuan, dan Akta Persaingan. Aduan plaintif sebenarnya adalah terhadap Kementerian Pengangkutan, Polis Diraja Malaysia, Jabatan Pengangkutan Jalan dan Suruhanjaya Pengangkutan Awam Darat. Bagaimanapun, plaintif tidak mendapat persetujuan Peguam Negara untuk memulakan tindakan semasa seperti yang diperuntukkan oleh undang-undang. Oleh itu, soalan 1 harus dijawab secara negatif kerana persatuan tidak mempunyai locus standi untuk membawa tuntutan dan tuntutan plaintif harus ditolak (lihat perenggan 19–20 & 22–24).

(3) Pendapat plaintif bahawa tindakan semasa adalah wajar sebagai tindakan perwakilan di bawah A 15 k 12 Kaedah-Kaedah Mahkamah 2012 adalah salah anggap. Di sini, plaintif tidak dalam gelarannya untuk membawa tindakan perwakilan bagi pihak pemandu teksi dan kereta sewa. Oleh itu, penegasan bahawa plaintif sedang memulakan tindakan perwakilan adalah tidak konsisten dengan pliding plaintif sendiri. Oleh itu, sekali lagi soalan 1 harus dijawab secara negatif dan writ plaintif serta pernyataan tuntutan harus ditolak (lihat perenggan 25 & 27–30).

(4) Plaintif merayu memplidkan bahawa ia mengalami kerugian mulai 16 April 2014, iaitu tarikh defendan diperbadankan dan didakwa menjalankan perniagaannya secara tidak sah, dan ia adalah tarikh paling awal di mana kausa tindakan boleh terakru. Oleh itu, tindakan plaintif telah disekat oleh had masa pada 15 April 2020 dan tuntutan plaintif di bawah APJ, Akta Persaingan, PP dan Akta Kontrak/pelanggaran kontrak akan dihalang oleh had masa apabila saman ini difailkan pada 4 Disember 2020. Oleh itu, soalan 2 harus dijawab secara afirmatif (lihat perenggan 33 & 35–36).

(5) Defendan tidak mengendalikan kenderaan bermotor di jalan raya. Sebaliknya, defendan menyediakan platform dalam talian hanya untuk pemandu pihak ketiga e-hailing bebas untuk berhubung dengan penumpang. Di bawah undang-undang, perniagaan defendan ditakrifkan sebagai 'perniagaan pengantaraan'. Oleh itu, defendan dan perniagaannya tidak tertakluk kepada APJ sebaliknya di bawah Akta Pengangkutan Awam Darat 2010 dan Akta Lembaga Perlesenan Kenderaan Perdagangan 1987. Oleh itu, APJ tidak mewujudkan apa-apa kewajipan di pihak defendan dengan plaintif, dan defendan tidak boleh disaman atas sebarang pelanggaran APJ yang didakwa oleh plaintif (lihat perenggan 38 & 40).

A (6) Ianya harus ada dapatan oleh Suruhanjaya Persaingan bahawa defendan bertanggungjawab terhadap perkara yang diadukan oleh plaintif sebelum sebarang hak peribadi untuk tindakan boleh diambil di bawah Akta Persaingan. Dalam kes semasa, tiada keterangan sebarang dapatan yang dibuat oleh Suruhanjaya Persaingan terhadap defendan berhubung B dengan tuntutan plaintif. Tanpa dapatan sedemikian, tindakan persendirian yang dimulakan oleh plaintif dalam saman ini tidak boleh dipertahankan. Oleh itu, soalan 4 telah dijawab secara negatif kerana plaintif tidak boleh membawa tindakan peribadi sekiranya tiada dapatan C pelanggaran oleh Suruhanjaya Persaingan dan tuntutan plaintif seharusnya ditolak (lihat perenggan 49–51).

(7) Ini bukanlah tuntutan individu terhadap pihak berkuasa awam atau kerajaan tetapi antara pihak swasta/persendirian. Oleh itu, plaintif tidak boleh menggunakan peruntukan Perlembagaan Persekutuan dalam D membawa tuntutan terhadap defendan. Oleh itu, soalan 5 telah dijawab secara negatif kerana Perlembagaan tidak mempunyai kesan mendatar untuk memberikan hak kepada individu untuk mengemukakan tuntutan terhadap individu lain dan bahawa tuntutan perlembagaan plaintif terhadap defendan kerana melanggar perkara 5, 6, 8 dan 13. E Perlembagaan Persekutuan telah ditolak (lihat perenggan 57–58).

(8) Aduan Persatuan ini sebenarnya adalah terhadap Kementerian Pengangkutan, Polis Diraja Malaysia, Jabatan Pengangkutan Jalan dan Suruhanjaya Pengangkutan Awam Darat. Bagaimanapun, parti-parti ini F tidak dijadikan pihak. Oleh kerana tuntutan tersebut merupakan tuntutan undang-undang awam, kerana ianya adalah keputusan pihak berkuasa awam yang berkaitan, kaedah yang betul hendaklah melalui semakan kehakiman. Oleh itu, soalan 6 dijawab secara negatif kerana plaintif tidak boleh memulakan tuntutan undang-undang awam tersebut G tanpa memohon kebenaran untuk semakan kehakiman (lihat perenggan 59–60 & 67).

(9) Pertama sekali mesti ada perjanjian atau kontrak antara defendan dan plaintif untuk sebarang tuntutan kontrak di bawah ss 24 dan 66 Akta Kontrak untuk digunapakai. Di sini, tidak ada dan oleh itu isu itu bukan H permulaan. Berkenaan tuntutan dan prayer plaintif untuk ganti rugi tertentu berjumlah RM100 juta, tuntutan tersebut adalah sama tidak berasas dan boleh ditolak berdasarkan prinsip asas undang-undang kontrak dan daripada perkataan s 75 Akta Kontrak 1950, mesti ada kontrak atau perjanjian dan jumlah yang dinamakan dalam kontrak I sebagai amaun yang perlu dibayar sekiranya berlaku kemungkiran tersebut. Defendan tidak pernah membuat perjanjian mahupun kontrak dengan plaintif. Oleh itu, peruntukan di atas tidak terpakai sepenuhnya untuk tindakan semasa. Oleh itu, soalan 7 telah dijawab secara negatif (lihat perenggan 68–69 & 72–74).]

Cases referred to

AirAsia Bhd v Rafizah Shima bt Mohamed Aris [2014] 5 MLJ 318; [2015] 2 CLJ 510, CA (refd)
Beatrice a/p At Fernandez v Sistem Penerbangan Malaysia & Ors [2005] 3 MLJ 681; [2005] 2 CLJ 713, FC (refd)
Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunications Sdn Bhd [2019] 6 MLJ 15, FC (refd)
Dato' Seri Anwar bin Ibrahim v Perdana Menteri Malaysia & Anor [2007] 4 MLJ 422; [2007] 3 CLJ 377, CA (refd)
Dato' Ahmad Johari bin Tun Abdul Razak v A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors and another appeal [2020] MLJU 562; [2020] 7 CLJ 588, CA (refd)
Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, FC (refd)
John Dadit v Bong Meng Chiat & Ors [2015] MLJU 1961; [2015] 1 LNS 1465, HC (refd)
KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor [2020] MLJU 435, HC (refd)
Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals [2014] 6 MLJ 31, FC (refd)
Lembaga Kumpulan Wang Simpanan Pekerja v Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja [2000] 3 MLJ 65; [2000] 3 CLJ 81, FC (refd)
Petroleum Nasional Bhd v Kerajaan Negeri Terengganu & another appeal [2004] 1 MLJ 8; [2003] 4 CLJ 337, CA (refd)
Seloga Sdn Bhd v UEM Gynisys Sdn Bhd [2007] 7 MLJ 385; [2008] 2 CLJ 686, CA (refd)
Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy [1995] 1 MLJ 817, FC (refd)
Tokio Marine Insurans (M) Bhd v WCT Construction Sdn Bhd & Anor [2018] 11 MLJ 83, HC (refd)

Legislation referred to

Commercial Vehicles Licensing Board Act 1987
Competition Act 2010 ss 6, 10, 23, 63, 64, Part II
Contracts Act 1950 ss 24, 66, 75
Federal Constitution arts 5, 6, 8, 13
Land Public Transport Act 2010
Limitation Act 1953 s 6(1)
Road Transport Act 1987 ss 75, 108, 109, 110, 110A, 119, 119A
Rules of Court 2012 O 6 r 2(1)(b), O 14, O 14A, O 15 r 12, O 33 r 5, O 53, O 53 r 3(6)
Societies Act 1966 s 7

R Kengadharan (R Kengadharan & Co) for the plaintiff.

Jack Yow (with Kwong Chiew Ee and Leong Ho Eng) (Rahmat Lim & Partners) for the defendant.

Ahmad Bache J:

INTRODUCTION

[1] The plaintiff being a registered umbrella society for Taxis, Limosines, and Airport Taxis ('society') had filed a suit against the defendant for, inter alia, breach of contract, breach of statutory duties and breach of several laws etc.

[2] The defendant, GrabCar, an e-hailing service business concern was incorporated on 16 April 2014. GrabCar resisted the plaintiff's claim on the ground that the society has no locus standi to sue and that all the claims are time barred. Further, there was no contract between them and that the plaintiff failed to get leave for judicial review as the claims involve public law/interest claim, amongst others.

[3] Pursuant to the above, vide encl 7, the defendant has posed seven questions of law to this court under O 14 and/or O 33 r 5 of the Rules of Court 2012 for final determination that finally disposed off this matter.

[4] After perusing the cause papers, refering to the relevant laws and considering submissions of parties, this court had answered all the seven questions in favour of the defendant and consequently, the plaintiff's claims stand dismissed with a nominal costs of RM1,000.

[5] Dissatisfied, the plaintiff had filed a notice of appeal to the Court of Appeal.

[6] Herewith are the grounds for the decision.

THE SALIENT FACTS

[7] The society/plaintiff had filed this claim essentially based on the allegation that the GrabCar (defendant) has allegedly run an illegal business not authorised by the relevant authorities and hence in competition with their members' activities, causing damages to them. Hence the plaintiff is claiming damages and various declarations for alleged statutory breaches from 16 April 2014, the time when the defendant was incorporated.

[8] However, the defendant have posed seven questions of law which this court had answered favourably for the defendant, disposing off the plaintiff's claims. Hence this appeal.

THE QUESTIONS POSED

[9] The seven questions posed by the defendant vide encl 7 are as follows:

(a) question 1: whether the plaintiff (Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin Dan Teksi Lapangan Terbang Semalaysia — GTSM ('the society'), as a society registered under s 7 of the Societies Act 1966, has the locus standi to claim for purported losses and damages allegedly caused by GrabCar to taxi and rental car drivers?

If the answer to question 1 is in the negative, then the society's writ and statement of claim be dismissed;

(b) question 2: the society is contending that GrabCar had breached the Road Transport Act 1987 ('the RTA'), the Competition Act 2010, the Federal Constitution and Contracts Act 1950/breach of contract from 16 April 2014. Whether the alleged causes of action of the society are time barred under s 6(1) of the Limitation Act 1953 as the claim was filed on 4 December 2020, more than six years from 16 April 2014?

If the answer to question 2 is in the affirmative, then the society's claims in the writ and statement of claim be dismissed;

(c) question 3: whether the RTA grants a right of private action to the society to sue GrabCar for alleged breaches of the RTA?

If the answer to question 3 is in the negative, then the society's claim against GrabCar for the alleged breaches of ss 108, 109, 110, 110A, 119 and 119A of the RTA in paras 9(i), 10, and 25(a)(i) of the statement of claim be dismissed;

(d) question 4: whether under s 64 of the Competition Act 2010, in the absence of a finding of infringement of any prohibition under Part II of the Competition Act 2010 by the Competition Commission, could the society commence a private action against GrabCar for the alleged infringement of the Competition Act 2010?

If the answer to question 4 is in the negative, then the society's claim against GrabCar for breaches of ss 6, 10, 23, 63 and 64 of the Competition Act 2010 in paras 9(ii), 11, 25(a)(ii) of the statement of claim be dismissed;

(e) question 5: whether the provisions of the Federal Constitution have 'horizontal effect' and are enforceable against private parties like GrabCar?

If the answer to question 5 is in the negative, then the society's claim against GrabCar for breaches of arts 5, 6, 8 and 13 of the Federal Constitution in paras 9(iii) and 25(a)(iii) of the statement of claim be dismissed;

(f) question 6: whether the filing of a civil action against GrabCar for the society's claims under paras 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim which are claims of public law could be commenced without leave for judicial review and impleading the relevant statutory authorities?

If the answer to question 6 is in the negative, then the society's claims under paras 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim be dismissed; and

(g) question 7: whether in the absence of contract between the society and GrabCar, could the society claim for alleged breaches of ss 24 and 66 of the Contracts Act 1950 and/or for liquidated damages of RM100m and/or for damages to be assessed under s 75 of the Contracts Act 1950 against GrabCar?

If the answer to question 7 is in the negative, then the society's claims for alleged breaches of ss 24 and 66 of the Contracts Act 1950 and/or for compensation based on liquidated damages of RM100m and/or to be assessed under s 75 of the Contracts Act 1950 against GrabCar under paras 15, 22, 23 and/or 25(b) and (c) of the statement of claim be dismissed.

THE LAW ON O 14A OF THE RULES OF COURT 2012

[10] Order 14A allows an early and expeditious disposal of any cause or matter based on a question of law or construction of any document arising in the cause or matter. It states as follows:

1 Determination of questions of law or construction (O 14A r 1)

(1) The court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the court that —

(a) such question is suitable for determination without the full trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

[11] It is trite that an issue is only suitable for determination under O 14A in the following circumstances:

(a) the facts involved in the determination of the said issues must not be in dispute and would not require further adjudication (see *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu & Another Appeal* [2004] 1 MLJ 8; [2003] 4 CLJ 337; and

(b) points of law have been stated in clear and precise terms; and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination (see *Seloga Sdn Bhd v UEM Gynisys Sdn Bhd* [2007] 7 MLJ 385; [2008] 2 CLJ 686, CA).

[12] Order 33 r 5 of the Rules of Court 2012 reads as follows:

> 5 Dismissal of action after decision of preliminary issue (O 33, r 5)
>
> If it appears to the court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.

[13] It is trite that either party can make an application under this O 14A of the Rules of Court 2012.

ANALYSIS AND FINDINGS OF THIS COURT

[14] After hearing submissions by parties and refering to the relevant laws/statutes and refering to the cause papers especially the pleadings and the affidavits and the intermediary licenses exhibited, this court held that essentially the disputes are only with regard to the legality of the GrabCar's (defendant's) actions and not on facts, as alleged by the plaintiff.

[15] On the other hand this court found that the plaintiff had merely avered that there are disputed facts without providing detailed particulars as how those facts are in dispute. In the case of *Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31 at para 24 the Federal Court said:

> legally, in O 14A and O 33 r 2 of the RHC applications, no party has any liberty to disagree just for the sake of disagreeing to any fact pleaded which is obviously undisputed ...

Further down the Federal Court said:

> an issue is only suitable for determination under O 14A if the points of law to be determined thereunder have been stated in clear and precise terms and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination which would be final as to the entire cause or matter.

[16] Hence this court had decided that the questions posed in encl 7 are questions of law, the determination of which will lead to the speedy disposal of the suit.

[17] This court will now endeavor to answer all the questions posed individually as follows.

Question 1: Whether the plaintiff as a society registered under s 7 of the Societies Act 1966, has the locus standi to claim for purported losses and damages allegedly caused by GrabCar to taxi and rental car drivers?

[18] In the Federal Court case of *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, the court explained the concept of locus standi thus:

> First, the plaintiff must possess an *interest in the issues* raised in the proceedings.
>
> Second, where the private plaintiff relies on an interest in the enforcement of *a public right and not of a private right*, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally.

[19] It is germane to note that the society has commenced the action in its capacity as a society (para 1 of the statement of claim). However, as can be seen from paras 13 and 21 of the statement of claim, the society's claims are premised on the alleged damages caused to *each individual taxi drivers and rental car drivers*, damages which are personal to them and not to the society. For example, at para 13 SOC, the plaintiff pleaded:

> *Plaintif selanjutnya menyatakan bahawa perbuatan dan tindakan Defendan:-*
>
> i) telah membawa dan menyebabkan kerugian kepada *setiap* pemandu teksi dan kereta sewa;
>
> ii) ... menyebab kehilangan ... dan pendapatan harian *pemandu teksi dan kereta sewa*.

[20] This court ruled that in law, the society which claimed to represent them has no locus standi to commence action for personal claims.

[21] In the Federal Court case of *Lembaga Kumpulan Wang Simpanan Pekerja v Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja* [2000] 3 MLJ 65; [2000] 3 CLJ 81 referred by the plaintiff, the trade union of KWSP has filed an action for certain declaratory reliefs against KWSP. The reliefs sought were in relation to certain rights of the past and present union members *arising out of their individual contracts*. The Federal Court held the claim ought to be struck out as the trade union had no locus standi to bring the action.

[22] Further, this court observed that the damages of RM100m of LAD's claim is a contractual claim under s 75 of the Contracts Act 1950. Unfortunately, there is no evidence of any contract between GrabCar and the society in the first place, and that there is also no LAD clause between GrabCar and the society (this will be discussed in detail later).

[23] Most importantly, the society/plaintiff is attempting to enforce a 'public right' as the plaintiff is claiming against GrabCar for the alleged failure to comply with the Road Transport Act, Federal Constitution, and the Competition Act (see paras 12(c), (d), (e), 13 (iv) to (xvii), 14 and 15 of the statement of claim). In fact, it can be gleaned from the statement of claim that the society's complaints are actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public Transport Commission. The society did not obtain the consent of the Attorney General to commence the instant action as required by the law set out in the *Government of Malaysia v Lim Kit Siang*.

[24] Therefore, question 1 ought to be answered in the negative in that the society has no locus standi to bring this claim and the society's writ and statement of claim should be dismissed.

[25] It is the society's alternative pleaded case in para 8(a)(i) of the plaintiff's affidavit in reply that the present action is properly constituted as a representative action under O 15 r 12 of the Rules of Court 2012.

[26] However, O 6 r 2(1)(b) of the Rules of Court 2012 states that prior to the issuance of a writ, the writ shall endorse the following if the plaintiff sues in a representative capacity:

> b) where the plaintiff sues in a representative capacity, *with a statement of the capacity in which he sues*;

[27] Here the writ and intitulement in the present action clearly states that the society is suing on behalf of Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin Dan Teksi Lapangan Terbang Semalaysia — GTSM.

[28] The society is actually suing on behalf of itself as seen in para 1 of the statement of claim. Therefore, the assertion that the society is commencing a representative action is inconsistent with the society's own pleadings. The society did not in its intitulement seeks to bring a representative action on behalf of *the taxi and rental car drivers*.

[29] It is trite that the plaintiff must be described as suing for itself and the specific class of people it represents. This is not how the society was described in the intitulement in the writ and statement of claim. The assertion that its action is a representative action is misconceived.

[30] Therefore, again this court ruled that question 1 ought to be answered in the negative and the society's writ and statement of claim should be dismissed.

Question 2: Whether the alleged causes of action of the society are time barred under s 6(1) of the Limitation Act 1953 as the claim was filed on 4 December 2020, more than six years from 16 April 2014?

[31] The society claimed that GrabCar has breached the Road Transport Act 1987, the Competition Act 2010, the Federal Constitution and Contracts Act 1950 which breach of contract was time barred.

[32] In the case of *Dato' Ahmad Johari bin Tun Abdul Razak v A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors and another appeal* [2020] MLJU 562; [2020] 7 CLJ 588 referred by the defendant, the court held:

> [58] On that premise, we are of the view that the issue of a continuing tort does not arise. Neither is the continuing tort a new cause of action as found by Her Ladyship since the causes of action for both the first and second/present suits (filed on 23 June 2014 and 13 July 2017 respectively) are similar, identical or are one and the same; which is the tort of conspiracy to do intentional harm. That being so, s 6(1)(a) of the Limitation Act 1953 (Act 254) provides for the filing of a suit based on a cause of action on a tort to be done within six years from the date of the accrual of the, cause of action, failing which, the suit will be barred by limitation.
>
> [59] As averted to earlier, the plaintiffs have expressly pleaded that the alleged acts complained of (the tort of conspiracy of intentional harm by unlawful means, uprooting the plaintiffs from Malaysia to a foreign land) occurred on or about 3 July 2008. Further, the plaintiffs are claiming for damages commencing from 4 July 2008. Thus based on their pleaded case, the cause of action on a tort of conspiracy of intentional harm arose on 3 July 2008 and s 6 of the Limitation Act 1953 (Act 254) applies.

[33] The society had pleaded that it sustained damages from 16 April 2014 ie the date the defendant was incorporated and allegedly runs its business illegally. The alleged statutory breaches in para 25(a) of the statement of claim as prayed are from 16 April 2014. Hence, *16 April 2014 is the earliest date on which the cause of action could have accrued*.

[34] Since the society has all the necessary facts and could have sued GrabCar on 16 April 2014, the society's cause of action against GrabCar would have accrued on 16 April 2014. Accordingly, the claims would have been time barred by 15 April 2020.

[35] Therefore, the society's action would have been time barred on 15 April 2020 and the claims of the society under the RTA, the Competition Act 2010, the Federal Constitution and Contracts Act 1950/breach of contract would be barred by limitation when this suit was filed on 4 December 2020 (six months out of time).

[36] As such, question 2 ought to be answered in the affirmative as the society's claims are time barred and this court hereby dismissed the writ and statement of claim.

Question 3: Whether the Road Transport Act 1987 grants a right of private action to the society to sue GrabCar for alleged breaches of the Road Transport Act 1987 ('the RTA 1987')?

[37] In essence, the society alleged that GrabCar had breached ss 108, 109, 110, 110A, 119 and 119A of the RTA in paras 9(i), 10 and 25 (a)(i) of the statement of claim. It would appear that the claim made by the society 'is for a claim of alleged breach of statutory duty. It is apparent that the RTA does not, in any way, confer upon the society a private right of action against GrabCar as the purpose of the RTA is set out in its preamble:

> An Act to make provision for the regulation of motor vehicles and of traffic on roads and other matters with respect to roads and vehicles thereon; to make provision for the protection of third parties against risks arising out of the use of motor vehicles

[38] This court agreed that GrabCar does not operate motor vehicles on the road. Instead, GrabCar provides *an online platform only for third party independent e-hailing drivers* to connect with passengers. Under the law, GrabCar's business is defined as 'intermediation business'.

[39] Specifically, the provision of 'intermediation business' e-hailing business was brought under the regulatory regime of the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 through the Land Public Transport (Amendment) Act 2017 and the Commercial Vehicle Licensing Board (Amendment) Act 2017 respectively.

[40] Hence, GrabCar or GrabCar's business are not subjected to the RTA but under the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 instead. As such, it follows that the RTA does not create any obligation on the part of GrabCar with the society, and that the GrabCar cannot be sued for any purported breach of the RTA by the society.

[41] Further, s 110A of the RTA 1987 had been repealed by s 37 of the Road Transport (Amendment) Act 2011 on 31 January 2011 through Federal *Gazette* PU(B) 37 of 2011. Hence, any question pertaining to GrabCar's alleged liability under s 110A of the RTA 1987 ought to be dismissed, as it is not applicable to GrabCar. It is to be remembered that GrabCar was only incorporated in 2014 (three years after the repeal of s 110A of the RTA in 2011).

[42] By reference to the purpose of the RTA as set out in its preamble, the RTA is intended for the regulation of motor vehicles and traffic on roads. It is evident that the RTA is not intended for the benefit or protection of the society as a particular class. That being the case, there should not be any special private right of action conferred upon the society under the RTA.

[43] In fact, the RTA has provided for its own penalties and enforcement mechanisms, whereby apart from the Road Transport Department Officers, the police are given equal powers of investigation and enforcement. Hence, the intention of Parliament is not to confer private right action.

[44] It follows that when an Act allows an imposition of a criminal penalty for the said statutory duties, the general rule is that no private individual can bring an action to enforce the criminal law except the respective authorities or the Attorney General. This was observed by the Federal Court in *Lim Kit Siang* at p 83h:

> With all due respect to the learned judge, my view is clear in that fundamentally where a statute creates a criminal offence by prescribing a penalty for the breach of it but not providing a civil remedy — the general rule is that no private individual can bring an action to enforce the criminal law, either by way of an injunction or by a declaration or by damages. I am inclined to the view that it should be left to the Attorney General to bring an action.

[45] In *KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor* [2020] MLJU 435 referred by the defendant, the plaintiff claimed against the contractors for breach of statutory duties under the Uniform Building By-Laws, tort of negligence and contract. It was held that the breach of the by-laws would result in enforcement by the public authority, therefore will not give rise to a right of private action. Only the local authority can enforce that by-law (see also the case of *Tokio Marine Insurans (M) Bhd v WCT Construction Sdn Bhd & Anor* [2018] 11 MLJ 83 (High Court).

[46] As the alleged breaches of ss 108, 109, 110, 110A, 119 and 119A of the RTA 1987 are penal in nature, the society does not have any private right of action for alleged breaches pertaining to the RTA 1987. The power lies in the attorney general to bring criminal action against GrabCar if there were any breaches of the RTA 1987 and not for the society to bring a private law action.

[47] Therefore, it is clear that the public authorities as permitted under the RTA 1987 are the only entities vested with the power to enforce any breaches of the RTA 1987. As such, this court owght to answer this question of law in the negative and dismiss the society's claim against GrabCar for the alleged breaches of ss 108, 109, 110, 110A, 119 and 119A of the RTA 1987.

Question 4: Whether under s 64 of the Competition Act 2010, in the absence of a finding of infringement of any prohibition under Part II of the Competition Act 2010 by the Competition Commission, could the society commence private action against GrabCar for the alleged infringement of the Competition Act 2010?

[48] Under the Competition Act 2010, a finding of infringement is needed before s 64 of the Competition Act 2010 can be relied upon by any party to commence a private action for breach of Competition Act 2010.

[49] Only then could the private right of action be brought after there is a prior decision/finding of infringement by the Malaysian Competition Commission ('Competition Commission'). This is because Parliament has clearly intended the Competition Commission to be the authority to supervise and regulate competition and not the courts. As such, there must be a finding by the Competition Commission that GrabCar is liable for the matters complained by the society before any private right of action may be pursued under the Competition Act.

[50] In the present case, there is no evidence of any findings made by the Competition Commission against GrabCar in reration fo the claim of the society. Without such a finding, the private action commenced by the society in this suit is untenable.

[51] Therefore, question 4 ought to be answered in the negative in that the society cannot bring a private action in absence of a finding of infringement by the Competition Commission and the claim of the society ought to be dismissed.

[52] Further, given that there are no such finding by the Competition Commission in respect of the complaints made by the society; the society's claim against GrabCar for breaches of ss 6, 10, 23, 63 and 64 of the Competition Act 2010 in paras 9(ii), 11, 25(a)(ii) of the statement of claim are clearly baseless.

Question 5: Whether the provisions of the Federal Constitution have 'horizontal effect' and are enforceable against private parties like GrabCar?

[53] The society has alleged that defendant/Grabcar has breached arts 5, 6, 8 and 13 of the Federal Constitution.

[54] From the authorities, the Federal Constitution does not have a 'horizontal effect' ie it cannot be invoked by one private party against another. This trite principle is established in the Federal Court case of *Beatrice a/p At Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681 at para 13;

A [2005] 2 CLJ 713 at para 720d to 720f :

> We took time to examine this allegation carefully and we found that it is simply not possible to expand the scope of art 8 of the Federal Constitution to cover collective agreements such as the one in question. To invoke art 8 of the Federal Constitution, the applicant must show that some law or action of the Executive discriminates against her so as to controvert her rights under the said article. Constitutional law, as a branch of public law, deals with the contravention of individual rights by the Legislature or the Executive or its agencies. *Constitutional law does not extend its substantive or procedural provisions to infringements of an individual's legal right by another individual*. Further, the reference to the 'law' in art 8 of the Federal Constitution does not include a collective agreement entered into between an employer and a trade union of workmen.

[55] This principle was reaffirmed by the Court of Appeal in *AirAsia Bhd v Rafizah Shima bt Mohamed Aris* [2014] 5 MLJ 318 at p 326; 2015] 2 CLJ 510 at p 519A, where Mohd Zawawi Salleh JCA (as His Lordship then was) observed that the Federal Constitution only has a 'vertical effect' ie it 'only addresses the contravention of an individual's rights by a public authority'.

[56] See also the case of *John Dadit v Bong Meng Chiat & Ors* [2015] MLJU 1961; [2015] 1 LNS 1465, where the plaintiff alleged that his privacy had been invaded by the defendant's publication of his photograph and story in breach of art 5 of the Federal Constitution. The Federal Court held that the plaintiff cannot mount a constitutional claim against the defendants who are private individuals ie it cannot cover infringements of an individual's legal right over another individual.

[57] It is an accepted fact that the society and GrabCar are private parties. This is not a claim by individuals against the public authority or the government but between private parties (the society and GrabCar). As such, the society cannot invoke the provisions of the Federal Constitution in bringing a claim against the defendant/GrabCar. From the authorities above; there is no horizontal effect in the enforcement of constitutional claims.

[58] Hence, question 5 ought to be answered in the negative in that the Constitution does not have a horizontal effect to confer rights for individual to bring claims against another individual and that the society's constitutional claims against GrabCar for breach of arts 5, 6, 8 and 13 of the Federal Constitution in paras 9(iii) and 25(a)(iii) of the statement of claim be dismissed.

Question 6: Whether the filing of a civil action against GrabCar for society's claims under paras 12 (c), (d)2 (e), 13 (iv) to (xvii), 14 and 15 of the statement of claim which are claims of public law could be commenced without leave for judicial

review and impleading the relevant statutory authorities?

[59] It can be gleaned from paras 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim of the plaintiff, (especially paras 12(c), (d), (e) and 13(iv) to (xvii)) that the society's complaints are actually against the Ministry of Transport, Royal Malaysia Police, Road Transport Department and the Land Public Transport Commission. However, these parties are not impleaded. The law is trite that if they wish to mount a public law action against these public authorities, it has to apply for leave to commence judicial review within three months from the date of the decision under O 53 r 3(6) of the Rules of Court 2012 which was already time barred.

[60] As the claim constitutes claims of public law, because those were decisions of the relevant public authorities, the correct mode should be by way of judicial review. In the Court of Appeal's case of *Dato' Seri Anwar bin Ibrahim v Perdana Menteri Malaysia & Anor* [2007] 4 MLJ 422; [2007] 3 CLJ 377, the appellant sought to challenge the first respondent's decision to revoke his appointment as Deputy Prime Minister via an originating summons. The application was struck out by the High Court and affirmed by the Court of Appeal.

[61] In affirming that the claim is one of public law and the mode should be by judicial review, the Court of Appeal held:

> [38] This suit raises public law issues as it is a decision and action taken by the Prime Minister in pursuance of the provisions of the Federal Constitution that is being impugned.

[62] It is crystal clear from the society's pleadings that its claims are based on the actions of the relevant public authorities.

[63] That the plaintiffs' claim are against the public authorities which involves public law can be seen at para 13(ix) of the plaintiff's statement of claim and p 41 of defendant's affidavit in support which reads:

> ... bahawa Kementerian Pengangkutan Jalan tidak mengendalikan dan/atau mempedulikan hak dan kepentingan pemandu teksi dan kereta sewa sejagat

[64] Further at para 15 statement of claim (p 43 of defendant's affidavit in support):

> Plaintif juga menyatakan bahawa Kerajaan Malaysia, Jabatan Pengangkutan Jalan, Lembaga Pengangkutan Awam dan Darat berserta Polis DiRaja Malaysia secara sengaja telah membenarkan Defendan beroperasi tanpa lesen dan tanpa pengiktirafan dari tahun 16hb Mei 2014 sehingga 27hb Julai 2017

[65] Hence it can be clearly seen that the declarations sought are of a public law element and does not involve protecting the society's private law rights. Further, the society had at para 8(a)(iv) of the plaintiff's affidavit in reply admitted that the present action is a 'public interest litigation'.

[66] The question arises as to why the society is attempting to challenge the decisions and actions of the public authorities without even impleading them when they are the decision-makers of the complained matters. This court agreed with the defendant that the action taken by the plaintiff is in disregard of O 53 of the Rules of Court 2012, as the society is attempting to challenge the actions of the public authorities by seeking declarations through this court.

[67] Hence, question 6 ought to be answered in the negative in that the society cannot commence such public law claims without applying for leave for judicial review. Consequently, this. court dismissed the society's claims under paras 12(c), (d), (e), 13(iv) to (xvii), 14 and 15 of the statement of claim.

Question 7: Whether in the absence of contract between the society and GrabCar, could the society claim for alleged breaches of ss 24 and 66 of the Contracts Act 1950 and/or for liquidated damages of RM100m and/or for damages to be assessed under s 75 of the Contracts Act 1950 against GrabCar?

[68] It is trite that any contractual claims involving ss 24 and 66 of the Contracts Act 1950 (see para 15 of the statement of claim), there must first be an agreement or contract between GrabCar and the society in the first place for the provisions to apply. Here, there is none, and with respect is a non-starter.

[69] Regarding the society's claims and prayers for liquidated damages amounting to RM10m, this court agreed with the defendant that such claim is equally unfounded and can be dismissed based on the basic contract law principle and the wordings of s 75 which reads:

> Section 75 Compensation for breach of contract where penalty stipulated for
>
> When *a contract* has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

[70] The meaning of 'liquidated damages' was explained in the Federal Court case of *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817, where the court observed at p 825E to 825F that:

> It must be remembered that the expression 'liquidated damages' is the name for the contracting parties' supposedly genuine pre-estimate of the loss to the innocent contracting party when the *contract* is broken by the other.

[71] This was also affirmed by the Federal Court again in *Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunications Sdn Bhd* [2019] 6 MLJ 15.

[72] From the above, it is clear from the wordings of s 75 of the Contracts Act 1950 that there must be a contract or agreement and a sum named in the contract as the amount to be paid in case of such breach.

[73] The defendant/GrabCar has never entered into an agreement nor contract with the society. Hence the above provisions are wholly inapplicable to the present suit, and is a non-starter.

[74] As such, question 7 should be answered in the negative in that without a contract between the society/plaintiff and GrabCar/defendant in the first place the claims for the purported breach of Contracts Act 1950 collapsed. The society's claims for the alleged breaches of ss 24 and 66 of the Contracts Act 1950 and/or for compensation based on liquidated damages of RM100m and/or to be assessed under s 75 of the Contracts Act 1950 against GrabCar under paras 15, 22–23 and/or 25(b) and (c) of the statement of claim is hence dismissed.

CONCLUSION

[75] For the foregoing reasons, whilst this court sympathises with the plaintiffs, this court found that there are no merits in the plaintiffs' claims. The defendant's application under O 14A of the Rules of Court 2012 is hence allowed with cost of RM1,000.

Defendant's application allowed, plaintiff's claim dismissed with costs.

Reported by K Selvaraj